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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/657,763      | 09/08/2003  | Ralph Harrison Lewis | 9384                | 3961             |

7590 04/04/2006

Bruce H. Johnsonbaugh  
Eckhoff & Hoppe  
Suite 2800  
101 Montgomery Street  
San Francisco, CA 94104

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| EXAMINER |
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PHILOGENE, PEDRO

|          |              |
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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3733

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/657,763

Applicant(s)

LEWIS ET AL.

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2 and 4, the term "said tibial support tray" lacks prior antecedent basis.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3,5 are rejected under 35 U.S.C. 102(b) as being anticipated by Averill et al. (4,714,472).

With respect to claim 1, Averill et al disclose an artificial knee joint comprising a metallic femoral component (22) having two condylar surfaces (28) integrally formed with a smooth recess surfaces, as best seen in FIG.2, extending between the condylar surfaces, the femoral component being formed without any reinforcement ribs in order to minimize the resection of the distal femur; as best seen in FIG.3; a femoral anchoring stem (36) carried by the femoral component, the anchoring stem adapted to extend into and be embedded in the femur (FIG.3), a metallic tibial anchoring platform (40) having an upper and a lower surfaces, a tibial anchoring stem (42) carried by the lower surface

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of the tibial support platform, the anchoring stem (42) adapted to extend downwardly into the tibia and be embedded in the tibia, a plastic spacer means (44) carried by the upper surface of the tibial support platform, the plastic spacer means (44) being formed to cooperate with and slide smoothly against the condylar surfaces of the femoral component, and mounting means (the flange at (24) in FIG.3) for connecting the plastic spacer means to the tibial support platform, as set forth in column 3, lines 1-15.

With respect to claims 3 and 5, Averill et al discloses a device wherein the femoral component and the femoral anchoring stem comprises a single monolithic piece of stainless steel; and, the plastic spacer means is made of ultra-high molecular weight plastic; as best seen in FIG.3, and as set forth in column 3, lines 1-15.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Averill et al. (4,714,472) in view of Chambat et al. (6,299,646).

With respect to claims 2, 4, it is noted that Averill et al discloses all the limitations, except for one or more standing upstanding pegs formed adjacent the second end of the tibial platform and a recesses formed in the spacer to engage the one or more upstanding pegs; as claimed by applicant. However, in a similar art, Chambat et al evidence the use of a tibial platform having one or more pegs (18) and a spacer

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having recesses (34) to accommodate the pegs and thereby guide the spacer with respect to the tibial platform.

Therefore, given the teaching of Chambat et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Averill et al, as taught by Chambat et al, by providing pegs in the platform and recess in the spacer of the device of Averill et al to guide the spacer with respect to the tibial platform.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

|           |        |                 |
|-----------|--------|-----------------|
| 5,194,066 | 3-1993 | Van Zile        |
| 4,944,756 | 7-1990 | Kenna           |
| 6,620,198 | 9-2003 | Burstein et al. |


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene  
March 31, 2006

  
PEDRO PHILOGENE  
PRIMARY EXAMINER